***THE HON'BLE SRI JUSTICE C.V.RAMULU**

+WRIT PETITION NO.17640 0F 1999

% 04-08-2005

Between:

B.D.Bhaskar s/o.Rangaiah,

Aged 41 years,formerly Railway Protection Force Constable

No.465/ELS/BZA C/o.B.Chinnappa,

Head Master, H.No.12-21-59, Prakashnagar,

IInd Line, Narasaraopet, Guntur Dist.

General Secretary

….Petitioner

A N D

1. The Divisional Security Commissioner,
   Railway Protection Force,
   Vijayawada,Krishna District.
2. The Chief Security Commissioner,
   Railway Protection Force,
   Secunderabad.

…..Respondents

! COUNSEL FOR THE PETITIONER: Mr. M.Surender Rao

COUNSEL FOR THE RESPONDENTS: Mr.Gowri Shankar Sanghi

< Gist:

> Head Note:

? CITATIONS:

1.1997 (1) LLJ 206

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO. 17640 OF 1999

ORDER:

This writ petition is filed seeking a mandamus declaring the action of the second respondent in removing the petitioner from service by proceedings No.X/P.227/153/89-17 dated 25-6-1990 as confirmed by the appellate authority-first respondent in proceedings No.X/P.227/1/Appeal (mjp) 90/22 dated 31-12-1990 as arbitrary, illegal and violative of Article 311 of the Constitution of India consequently to direct the respondents to reinstate the petitioner with all benefits.

It is the case of the petitioner that he joined as a Constable in the Railway Protection Force on 18-11-1979 and he had very good track record of service and he did not give any scope for any complaint from any corner. While so, on 24-10-1989, the petitioner was placed under suspension and on 23-11-1989, he was issued with a charge sheet alleging that in the course of investigation in Crime No.27/89, it was revealed that the petitioner also participated along with criminals in the commission of theft of eight numbers of rails near Macherla during the month of February, 1989 and shared the sale proceeds after the disposal of the stolen rails. Further, he was on C.L. on 10.2.1989, 14.2.1989 to 16.2.1989 and from 19.2.1989 to 20.2.1989 during which the theft had taken place. Though he submitted a detailed explanation denying the charges levelled against him, an enquiry was ordered in to the matter

and the Enquiry Officer submitted report on 21.05.1990 holding the petitioner guilty of the charges. On the basis of the enquiry officer's report, the second respondent removed the petitioner from service vide proceedings dated 25.6.1990. Aggrieved by the same, the petitioner filed an appeal and the same was also rejected on 31.12.1990.

The learned counsel for the Petitioner contended that absolutely there is no evidence to link the petitioner with the theft purported to have been committed in the month of February, 1989 by some unknown persons. He was falsely implicated only on the basis of some hearsay evidence. Therefore, the disciplinary authority as well as appellate authority erred in removing the petitioner from Railway Protection Force. Therefore, the impugned orders are liable to be set aside.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner and further it is asserted that the charge against the petitioner is serious one particularly the petitioner being a member of the disciplined Force i.e. Railway Protection Force connived with the criminals to enable them to steal eight rails and shared the booty with them. Therefore, even on mere hearsay evidence, the petitioner could be removed from service. Thus, the action taken by the second respondent as confirmed by the first respondent does not call for interference by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned proceedings and other material placed on record.

Admittedly, this is a case, which emanated from the hearsay evidence. All the witnesses have sated that when they have confronted A.1 to A.5 in crime No.27/89, they revealed that the petitioner also participated in the first crime committed by them in the year 1989 in stealing of eight rails. Except this, there is no specific charge. The whole of the evidence placed and relied on by the enquiry officer is only the evidence of three witnesses of the department i.e 1) Seshagiri Rao 2) Prashanth Kumar and 3) G.Jeevaraju, purported to have over heard the accused - A.1 to A5 in crime No.27/89 having stated that the petitioner also participated in the crime and he has shared a booty of Rs.1000/- for the same and further in the charge, the respondents have given few dates to show that he was on leave during those days and submitted that as such it must be culled out that the petitioner participated in

theft committed in the month of February,1989. In this regard, the petitioner examined as many as three witnesses to show that all those days, he was at Vijayawada in his residence and he did not participate in any crime. Except the hearsay evidence, there is no other evidence available on record. Why the statement of accused 1 to 5 was not recorded, if any, why it was not utilized for the purpose of fixing the petitioner for the offence alleged against him is not known. The whole of the evidence is only hearsay evidence and it is not supported by any documentary evidence or the statements of anybody else. It is curious to note that where and when accused 1 to 5 in the above said case were apprehended, when they revealed as to the involvement of the petitioner, why petitioner's name was not included in the F.I.R. and why he was not apprehended along with others.

The learned counsel for the respondents made a faint effort and contended that the allegations themselves were vague and probably the criminal case would not have stood the scrutiny of law. Therefore, the name of the petitioner was not included either in the F.I.R or in the charge sheet.

Nothing prevented the respondents in implicating the petitioner, if he is really involved in the crime along with accused 1 to 5. But, such course of action was not adopted and they just wanted to call him a thief and get rid of him by way of relying upon hearsay evidence. In a departmental proceeding, the hearsay evidence also can be taken into consideration, provided there is some substantial record or oral evidence available. The hearsay and indirect evidence alone cannot be relied upon, in the absence of any documentary or oral evidence in that regard. The hearsay evidence can be taken into consideration for the purpose of filling up certain missing links here and there, but that itself does not mean just by relying upon the hearsay evidence, a person can be thrown out of employment and call him 'a thief' along with some criminals. However, in the first report purported to have been submitted by the Divisional Security Commissioner, Bezawada, dt 21.10.1989 by PCI, Guntur reference to the fact of revelation of the accused 1 to 5 that the petitioner, D. Bhaskar Rao had participated with them in the theft of rails committed for the first time was mentioned and some indirect evidence, such as, Mahazar report dated 3-7-1989 and Message dated 27-2-1989 were marked in the departmental enquiry. But, they have no consequence whatsoever and they do not lead us anywhere. Further, some documents were enclosed to the said report dated 21.10.1989 such as, statements of accused 1 to 5 etc., but those documents were also not marked during the

departmental enquiry nor the statements of A1 to A5 were filed in the enquiry for the purpose of fixing the petitioner as to theft. In this regard, I am fortified by the decision of the Bombay High Court in **CHANDRAKUMAR MADHUKAR DESHMUKH v. BOARD OF TRUSTEES OF PORT OF BOMBAY** wherein it was held :

> "……..Therefore, in my view, in the absence of any other substantive evidence, hearsay or indirect evidence cannot take the place of conclusive evidence. In regard to the charge against the delinquents, the proof of truthfulness of the hearsay evidence cannot be dispensed with in a domestic enquiry."

Under those circumstances, I am of the opinion that the findings arrived at by the disciplinary authority as confirmed by the appellate authority do not stand scrutiny of law and the impugned proceedings are liable to be set aside and accordingly set aside.

In the result, the petitioner is entitled for reinstatement with continuity of the service and attendant benefits. However, in the circumstances of the case, he is not entitled for any back wages etc.

The writ petition is allowed to the extent indicated above. No order as to costs.

C.V.RAMULU,J

04-08-2005

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